

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CLINTON BROWN,

Plaintiff,

v.

EMIL ASSENTATO; TAX DEED
ENTERPTISES, LLC; and STEVE WEERA
TONASUT TRUST,

Defendants.

Case No.: 2:23-cv-02972-MEMF-KS

**ORDER GRANTING REQUESTS FOR
JUDICIAL NOTICE AND MOTIONS TO
DISMISS [ECF NOS. 18, 26]**

Before the Court are a Motion to Dismiss and Request for Judicial Notice filed by Defendant Steve Weera Tonusut Trust, as well as a Motion to Dismiss and Request for Judicial Notice filed by Defendants Emil Assentato and Tax Deed Enterprises, LLC. ECF Nos. 18, 18-2, 26, 26-2. For the reasons stated herein, the Court GRANTS IN PART both Requests for Judicial Notice and GRANTS both Motions to Dismiss.

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BACKGROUND

I. Factual Background¹

Plaintiff Clinton Brown (“Brown”) is an individual residing in California. Compl. at 1.² Defendant Emil Assentato (“Assentato”) is an individual residing in New York. *Id.* Defendant Tax Enterprises, LLC (“TDE”) is a limited liability company with an address in Florida. *Id.* Assentato controls TDE. *Id.* at 2. Defendant Steve Weera Tonasut Trust (“Tonasut Trust,” or collectively with Assentato and TDE, “Defendants”) is a trust with an address in California. *Id.* at 1.

On October 22, 2020, Brown, Assentato, and TDE signed an operating agreement that created a partnership. *Id.* at 2. On December 18, 2020, Brown purchased an interest in a property located at 27250 Agoura Road in Calabasas, California (the “Agoura Property”). *Id.* The Agoura Property was previously owned outright by TDE and had an outstanding property tax debt of \$100,000. *Id.* at 3. The Agoura Property was sold for a market price of \$299,000.

Brown made a \$10,000 cash deposit and executed deeds of trust³ for \$179,000 with the Agoura Trust and \$110,000 with Assentato. Brown received a 50% ownership interest in the Agoura property. *Id.* at 2. Assentato received a 30% ownership interest, and TDE retained 20%. *Id.* Brown was completely responsible for development of the property. *Id.*

In January 2021, Assentato loaned Brown \$250,000 to finance the development of a solar on the Agoura Property. *Id.* at 3. Brown was individually responsible for paying back the loan

ss otherwise indicated, the following factual background is derived from Plaintiff Clinton Brown's
aint. ECF No. 1 ("Complaint" or "Compl."). For the purposes of this Motion, the Court treats these
allegations as true, but at this stage of the litigation, the Court makes no finding on the truth of these
ions and is therefore not—at this stage—finding that they are true.

Complaint does not contain numbered paragraphs and so the Court cites to page numbers within the
plaint rather than paragraphs. Brown is reminded that, despite his *pro se* status, he is obligated to comply
with the Federal Rules of Civil Procedure and the Local Rules. *See* C.D. Cal. L.R. 83-2.2.3 (“Any person
acting pro se is required to comply with these Local Rules, and with [the Federal Rules of Civil
Procedure]”); *see also* Fed. R. Civ. P. 10(b) (“A party must state its claims or defenses in numbered
paragraphs”).

ough the Complaint does not make this clear, the Court understands a “deed of trust” to be a loan agreement between a property purchaser and a lender where title to the property is held by either the lender or a third-party trustee (as opposed to the purchaser) until the loan is repaid. *See Deed*, Black’s Law Dictionary (10th ed. 2019).

1 and paying interest. *Id.* Brown also made interest payments of \$1,977 per month to the Tonasut Trust
 2 in connection with the \$179,000 deed of trust. *Id.* In September 2021, Brown faced a shortage of
 3 capital and ceased making interest payments to the Tonasut Trust. *Id.* Also in late 2021, the Los
 4 Angeles County Department of Regional Planning rejected an application for a solar farm at the
 5 Agoura Property. *Id.* at 3.

6 Brown then agreed to transfer 15% (from his 50%) ownership in the Agoura Property to the
 7 Tonasut Trust in exchange for \$100,000 cash and an agreement to delay interest payments on the
 8 \$179,000 deed of trust. *Id.* This agreement was formalized, and the Tonasut Trust acquired the 15%
 9 interest on February 1, 2022. *Id.*

10 On December 17, 2022, Brown filed a separate lawsuit in this Court against an official in the
 11 Los Angeles County Department of Regional Planning alleging that the denial of the solar farm
 12 permit was a violation of the Takings Clause of the United States Constitution. *See id.; see also*
 13 *Clinton Brown v. Clark R. Taylor*, Case No. 2:22-cv-09203-MEMF-KS.

14 II. Procedural History

15 Brown filed this action in this Court on April 20, 2023. *See* Compl. Brown brings one cause
 16 of action against Assentato, TDE, and the Tonasut Trust: violations of the Securities Exchange Act
 17 of 1934 (15 U.S.C. §§ 77a–78rr). In his prayer for relief, Brown requests: (1) that the Court declare
 18 that “the land transfer” was an “investment contract” and “security” as defined by 15 U.S.C. §
 19 77b(a)(1) (“Section 77b(a)(1)’); (2) that the Court find that Defendants’ omissions in connected with
 20 the sale of this “investment contract” violated 15 U.S.C. § 77q(a)(1) (“Section 77q(a)(1)”) and 15
 21 U.S.C. § 78j(b) (“Section 78j(b)’); (3) that the Court rescind Defendants’ ownership interests in the
 22 Agoura Property pursuant to 15 U.S.C. § 77l(a)(2) (“Section 77l(a)(2)’); and (4) that the Court grant
 23 other remedies it finds just. *See* Compl. at 6.

24 The Tonasut Trust filed a Motion to Dismiss on May 22, 2023, alongside a Memorandum of
 25 Points and Authorities and Request for Judicial Notice. ECF No. 18 (“Tonasut Motion” or “Tonasut
 26 Mot.”); ECF No. 18-1 (“Tonasut MPA”); ECF No. 18-2 (“Tonasut RJN”). Assentato and TDE filed
 27 a Motion to Dismiss on July 15, 2023, alongside a Memorandum of Points and Authorities and
 28 Request for Judicial Notice. ECF No. 26 (“Assentato Motion” or “Assentato Mot.”); ECF No. 26-1

1 (“Assentato MPA”); ECF No. 26-2 (“Assentato RJP”). Brown filed an Opposition to the Assentato
 2 Motion on July 16, 2023. ECF No. 27 (“First Opp’n”). Brown filed an Opposition to Tonasut Motion
 3 on July 23, 2023. ECF No. 30 (“Second Opp’n”). Assentato and TDE filed a Reply in support of
 4 their Motion on July 24, 2023. ECF No. 31 (“Assentato Reply”). The Tonasut Trust filed a Reply in
 5 support of its Motion on July 31, 2023. ECF No. 32 (“Tonasut Reply”).

6 The Court held a hearing on the Motion on September 21, 2023.

7 **REQUESTS FOR JUDICIAL NOTICE (ECF Nos. 18-2, 26-2)**

8 **I. Applicable Law**

9 A court may judicially notice facts that: “(1) [are] generally known within the trial court’s
 10 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy
 11 cannot reasonably be questioned.” Fed. R. Evid. 201(b) (“Rule 201”). Under this standard, courts
 12 may judicially notice “undisputed matters of public record,” but generally may not notice “disputed
 13 facts stated in public records.” *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001),
 14 overruled on other grounds by *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1125–26 (9th Cir.
 15 2002). Once a fact is judicially noticed, the court “must instruct the jury to accept the noticed fact as
 16 conclusive.” Fed. R. Evid. 201(f).

17 On a motion to dismiss, courts are generally prohibited from “consider[ing] any material
 18 beyond the pleadings.” *United States v. Corinthian Colleges*, 655 F.3d 984, 998 (9th Cir. 2011)
 19 (quoting *Lee*, 250 F.3d at 688). Courts generally only consider the complaint and other materials
 20 “submitted with and attached to the Complaint.” *Id.* at 999. Documents not attached to the
 21 complaint—including documents that might otherwise be subject to judicial notice—may only be
 22 considered if: “(1) the complaint refers to the document; (2) the document is central to the plaintiff’s
 23 claim; and (3) no party questions the authenticity of the document.” *Id.* (citing *Marder v. Lopez*, 450
 24 F.3d 445, 448 (9th Cir. 2006)). A court considering a motion to dismiss should not take judicial
 25 notice of material that cannot be considered for the motion. *See Lee*, 250 F.3d at 689–90.

26 A Court may take judicial notice of a document and consider it in analyzing a motion to
 27 dismiss. *See Corinthian Colleges*, 655 F.3d at 998. In order to do so, the document must satisfy both
 28 the *Corinthian Colleges* test and the requirements of Rule 201. *See id.* (first considering whether

1 document was referenced in and central to complaint, and second considering Rule 201). However, a
 2 Court may also consider certain documents in deciding a motion to dismiss without taking judicial
 3 notice of the documents. *See Marder*, 450 F.3d at 448 (finding documents may be considered in
 4 deciding motion to dismiss, based on a test identical to the one in *Corinthian Colleges*, without
 5 taking judicial notice of the documents). In some circumstances, it may be appropriate to deny a
 6 request for judicial notice, avoiding the obligation to instruct the jury on the trust of a document, but
 7 nevertheless consider the document as evidence in deciding a motion to dismiss. *See id.*

8 II. Discussion

9 The Tonasut Trust requests judicial notice of nine documents that are related to the series of
 10 transactions described in the Factual Background above. *See* Tonasut RJN at 2. Assentato and TDE
 11 request judicial notice of four documents related to the same series of transactions. The Court will
 12 briefly analyze each item.

13 There does not appear to be any dispute as to the authenticity of the items Defendants request
 14 judicial notice of. Brown has not opposed either request, and has “confirm[ed] the authenticity of
 15 documents filed by Assentato and TDE.” *See* First Opp’n at 2. However, a lack of dispute as to
 16 authenticity is not alone sufficient for judicial notice, particularly on a motion to dismiss. To be
 17 considered on a motion to dismiss, the documents must be both referenced in, and central to, the
 18 complaint. *Corinthian Colleges*, 655 F.3d at 999. Otherwise, the more general rule that the Court
 19 only considers the factual matter in the complaint on a motion to dismiss applies. If this standard is
 20 not met, the Court will neither consider the document nor take notice of it. *See Lee*, 250 F.3d at 689–
 21 90 (court considering a motion to dismiss should not take notice of documents that cannot be
 22 considered in deciding the motion). Even if this standard is met, the documents must also meet Rule
 23 201’s requirements to be judicially noticeable. *See* Fed. R. Evid. 201. But the Court may consider
 24 documents in deciding these Motions without taking judicial notice of them. *See Marder*, 450 F.3d at
 25 448 (explaining circumstances in which documents may be considered on a motion to dismiss).
 26 When a court considers documents referenced in the complaint in deciding a motion to dismiss, it
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1 need not convert the 12(b)(6) motion into a motion for summary judgment.⁴ *Corinthian Colleges*,
 2 655 F.3d at 993 n.4.

3 **A. Tonasut Trust's Documents**

4 Document No. 1: “Agreement to Procure Lender, dated October 29, 2020, between Clinton
 5 Brown of The Atlas . . . and “Rushmyfile.com” loan broker” See Tonasut RJN at 2; *see also*
 6 Tonasut RJN at 5–11 (the document). This document is not referenced in the Complaint. *See Compl.*
 7 at 2-4. Nor does the Complaint refer to any agreement with this date, or any agreement with
 8 Rushmyfile.com. *See id.* This document therefore cannot be considered in ruling on a motion to
 9 dismiss. *See Corinthian Colleges*, 655 F.3d at 999. The Court need not reach the question of whether
 10 it would otherwise be subject to judicial notice. *See Lee*, 250 F.3d at 689–90 (when deciding a
 11 motion to dismiss, court should not take judicial notice of any document that cannot be considered).
 12 The Tonasut RJN is DENIED as to this document, and this document will not be considered in
 13 deciding the Motions to Dismiss.

14 Document No. 2: “Certificate of Business Purpose Loan and Loan and Real Property
 15 Security Declaration, from Clinton Brown for Atlas LLC, dated Nov. 10, 2020” See Tonasut
 16 RJN at 2 (describing the document); *see also* Tonasut RJN at 12–14 (the document). This document
 17 appears closely related to the loan for \$179,000 between Brown and Tonasut Trust. *See Compl.* at 2.
 18 It is referenced in the Complaint and central to the Complaint, and Brown has not questioned its
 19 authenticity. *See Corinthian Colleges*, 655 F.3d at 999. However, this document does not appear to
 20 meet the requirements of Rule 201, as its existence and facts within it are neither generally known
 21 within the district nor easily verifiable from sources that cannot be questioned. *See Fed. R. Evid.*
 22 201(b). Accordingly, the Tonasut RJN is DENIED as to this document, but the document may still

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 25 ⁴ Brown requests that if the Court consider the documents submitted through the Requests for Judicial Notice,
 26 then the Court should convert the Motions to Dismiss into Motions for Summary Judgment. The Court
 27 declines to do so, finding that this would not be appropriate given the lack of a factual record, and is not
 28 required under any controlling authority. *See Corinthian Colleges*, 655 F.3d at 993 n.4 (“A district court may
 consider documents referenced by the Complaint without converting a 12(b)(6) motion to one for summary
 judgment.”).

1 be considered in deciding these Motions. *See Marder*, 450 F.3d at 448 (considering documents
 2 central to complaint in deciding motion to dismiss, without taking judicial notice).

3 Document No. 3: “Loan Escrow Addendum, Source of Repayment, Exh. 3. . . .” *See Tonasut*
 4 *RJN* at 2 (describing the document); *see also Tonasut RJN* at 15 (the document). This document is
 5 not referenced in the Complaint and does not appear central to it. The *Tonasut RJN* is DENIED as to
 6 this document, and the document will not be considered.

7 Document No. 4: “Grant Deed dated Nov. 12, 2020 . . . recorded 12/18/2020” *See*
 8 *Tonasut RJN* at 2 (describing the document); *see also Tonasut RJN* at 16–19 (the document). This
 9 document appears to be the deed for the sale of the Agoura Property from TDE to Assentato. *See*
 10 *Compl.* at 2. It is both referenced in and essential to the Complaint, and thus can be considered in
 11 deciding the Motions to Dismiss. *See Corinthian Colleges*, 655 F.3d at 999. It is also on record with
 12 the County of Los Angeles, and so can be verified from a source that would not be questioned and is
 13 therefore appropriate for judicial notice. *See Fed. R. Evid. 201(b)*. The *Tonasut RJN* is GRANTED
 14 as to this document, and the document will be considered in deciding the Motions to Dismiss.

15 Document No. 5: “(composite exhibit) Secretary of State of California, LLC Registration--
 16 Articles of Organization filed 08/06/2020 [and] Secretary of State Statement of Information, filed
 17 Jan. 26, 2022” *See Tonasut RJN* at 2 (describing the documents); *see also Tonasut RJN* at 20–
 18 22 (the documents). These documents—corporate registration documents for Brown’s entity, The
 19 Atlas LLC—are not referenced in the Complaint nor central to it. They are not appropriate to
 20 consider in deciding the Motions to Dismiss, and therefore not appropriate to take judicial notice of
 21 at this time. *See Corinthian Colleges*, 655 F.3d at 999; *Lee*, 250 F.3d at 689–90. The *Tonasut RJN* is
 22 DENIED as to these documents, and the documents will not be considered.

23 Document No. 6: “Promissory Note Secured by Deed of Trust, dated Oct. 29, 2020, makers
 24 The Atlas LLC and Clinton Brown to Steve Weera Tonasut, as Trustee, lender” *See Tonasut*
 25 *RJN* at 2 (describing the document); *see also Tonasut RJN* at 23–26 (the document). This document
 26 appears to be a promissory note related to the loan for \$179,000 between Brown and Tonasut Trust.
 27 *See Compl.* at 2. It is referenced in the Complaint and central to the Complaint, and Brown has not
 28 questioned its authenticity. *See Corinthian Colleges*, 655 F.3d at 999. However, this document does

1 not appear to meet the requirements of Rule 201, as its existence and facts within it are neither
 2 generally known within the district nor easily verified from sources that cannot be questioned. *See*
 3 Fed. R. Evid. 201(b). Accordingly, the Tonasut RJN is DENIED as to this document, but the
 4 document may still be considered in deciding these Motions. *See Marder*, 450 F.3d at 448
 5 (considering documents central to complaint in deciding motion to dismiss, without taking judicial
 6 notice).

7 Document No. 7: “Deed of Trust dated Oct. 29, 2020, The Atlas LLC as trustor (borrower),
 8 Superior Loan Servicing as trustee, and Steve Weera Tonasut, as trustee, the beneficiary, recorded
 9 12/18/2020” *See* Tonasut RJN at 2 (describing the document); *see also* Tonasut RJN at 27–47
 10 (the document). This document appears to be the deed of trust for the \$179,000 loan between Brown
 11 and Tonasut Trust. *See* Compl. at 2. It is referenced in the complaint and central to the complaint,
 12 and Brown has not questioned its authenticity. *See Corinthian Colleges*, 655 F.3d at 999. It is also on
 13 record with the County of Los Angeles, and so can be verified from a source that cannot be
 14 questioned and is therefore appropriate for judicial notice. *See* Fed. R. Evid. 201(b). The Tonasut
 15 RJN is GRANTED as to this document, and the document will be considered in deciding the
 16 Motions to Dismiss.

17 Document No. 8: “Grant Deed, Atlas LLC as grantor to Steve Weera Tonasut, as trustee,
 18 grantee, recorded 02/01/2022” *See* Tonasut RJN at 2 (describing the document); *see also*
 19 Tonasut RJN at 48–58 (the document). This appears to be the grant deed for the transfer of 15%
 20 ownership to the Tonasut Trust on February 1, 2023. *See* Compl. at 3. It is referenced in the
 21 Complaint and central to the Complaint, and Brown has not questioned its authenticity. *See*
 22 *Corinthian Colleges*, 655 F.3d at 999. It is also on record with the County of Los Angeles, and so
 23 can be verified from a source that would not be questioned and is therefore appropriate for judicial
 24 notice. *See* Fed. R. Evid. 201(b). The Tonasut RJN is GRANTED as to this document, and the
 25 document will be considered in deciding the Motions to Dismiss.

26 Document No. 9: “(composite exhibit) Loan Extensions/Modification Agreements of
 27 02/28/2022 and of 2/23/2023” *See* Tonasut RJN at 2 (describing the documents); *see also*
 28 Tonasut RJN at 54–63 (the documents). This appears to be the loan modification agreements that

were made in exchange for the 15% transfer of ownership to the Tonasut Trust. *See* Compl. at 3. These documents are referenced in the Complaint and central to the Complaint, and Brown has not questioned their authenticity. *See Corinthian Colleges*, 655 F.3d at 999. However, this document does not appear to meet the requirements of Rule 201, as its existence and facts within it are neither generally known within the district nor easily verified from sources that cannot be questioned. *See Fed. R. Evid. 201(b)*. Accordingly, the Tonasut RJN is DENIED as to this document, but the document may still be considered in deciding these Motions. *See Marder*, 450 F.3d at 448 (considering documents central to complaint in deciding motion to dismiss, without taking judicial notice).

B. Assentato's and TDE's Documents

Document No. 1: “(composite exhibit) Secretary of State of California, LLC Registration-- Articles of Organization filed 08/06/2020, and; Secretary of State Statement of Information, filed Jan. 26, 2022” *See* Assentato RJN at 2 (describing the documents); *see also* Assentato RJN at 5–7 (the documents). These are identical to Tonasut Trust’s Document No. 5. For the same reasons, the Assentato RJN is DENIED as to these documents, and the documents will not be considered.

Document No. 2: “Grant Deed dated Nov. 12, 2020, by Tax Deed Enterprises, LLC to Atlas LLC, dated Nov. 12, 2020, recorded 12/18/2020” *See* Assentato RJN at 2 (describing the documents); *see also* Assentato RJN at 8–11 (the documents). This is identical to Tonasut Trust’s Document No. 4. For the same reasons, the Assentato RJN is GRANTED as to this document, and the document will be considered in deciding the Motions to Dismiss.

Document No. 3: “Deed of Trust dated Oct. 22, 2020, recorded 12/18/20” *See* Assentato RJN at 2 (describing the document); *see also* Assentato RJN at 12–26 (the document). This appears to be the deed of trust between Brown and Assentation. *See* Compl. at 2. It is referenced in the Complaint and central to the Complaint, and Brown has not questioned its authenticity. *See Corinthian Colleges*, 655 F.3d at 999. It is also on record with the County of Los Angeles, and so can be verified from a source that would not be questioned and is therefore appropriate for judicial notice. *See Fed. R. Evid. 201(b)*. The Assentato RJN is GRANTED as to this document, and the document will be considered in deciding the Motions to Dismiss.

1 Document No. 4: “Loan Agreement, Borrower The Atlas, LLC, Lender Emil Assentato,
 2 dated February 2, 2021” *See* Assentato RJD at 2 (describing the document); *see also* Assentato
 3 RJD at 27–30 (the document). This appears to be the loan agreement between Assentato and Brown
 4 for \$250,000. *See* Compl. at 3. It is referenced in the Complaint and central to the Complaint, and
 5 Brown has not questioned its authenticity. *See Corinthian Colleges*, 655 F.3d at 999. Further, Brown
 6 references this document and makes arguments based on it in his Oppositions. *See* First Opp’n at
 7 (referencing “Docket 26-1, 2, lines 8-9,” and arguing “that makes it more likely that it is indeed a
 8 security.”). These documents may be considered. However, this document does not appear to meet
 9 the requirements of Rule 201, as its existence and facts within it are neither generally known within
 10 the district nor easily verified from sources that cannot be questioned. *See* Fed. R. Evid. 201(b).
 11 Accordingly, the Tonasut RJD is DENIED as to this document, but the document may still be
 12 considered in deciding these Motions. *See Marder*, 450 F.3d at 448 (considering documents central
 13 to complaint in deciding motion to dismiss, without taking judicial notice).

14 **C. Conclusion as to Requests for Judicial Notice:**

15 For the reasons described above, the Requests for Judicial Notice are GRANTED as to the
 16 following documents:

- 17 1. Grant Deed dated Nov. 12, 2020, and recorded December 18, 2020 (Tonasut Trust’s
 18 Document No. 4, and Assentato’s and TDE’s Document No. 2)
- 19 2. Deed of Trust dated Oct. 29, 2020, The Atlas LLC as trustor (borrower), Superior Loan
 20 Servicing as trustee, and Steve Weera Tonasut, as trustee and beneficiary, recorded
 21 December 18, 2020 (Tonasut Trust’s Document No. 7)
- 22 3. Grant Deed recorded February 1, 2022 (Tonasut Trust’s Document No. 8)
- 23 4. Deed of Trust dated Oct. 22, 2020, The Atlas LLC as trustor (borrower), Emil Assentato
 24 as lender, Brown Realty Group as trustee, recorded December 18, 2020 (Assentato’s and
 25 TDE’s Document No. 3).

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27 The Requests for Judicial Notice are DENIED as to the following documents, but the Court
 28 will still consider these documents, for the reasons described above:

1. Certificate of Business Purpose Loan and Loan and Real Property Security Declaration, from Clinton Brown for Atlas LLC, dated Nov. 10, 2020 (Tonasut Trust's Document No. 2).
2. Promissory Note Secured by Deed of Trust, dated Oct. 29, 2020, The Atlas LLC and Clinton Brown to Steve Weera Tonasut, as Trustee (Tonasut Trust's Document No. 6).
3. Loan Extensions/Modification Agreements of February 28, 2022, and of February 23, 2023 (Tonasut Trust's Document No. 9).
4. Loan Agreement, Borrower The Atlas, LLC, Lender Emil Assentato, dated February 2, 2021 (Assentato's and TDE's Document No. 4).

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The Requests for Judicial Notice are DENIED as to the following documents, and the Court will not consider them:

1. Agreement to Procure Lender, dated October 29, 2020 (Tonasut Trust's Document No. 1)
2. Loan Escrow Addendum, Source of Repayment, Exhibit 3 (Tonasut Trust's Document No. 3)
3. Secretary of State of California, LLC Registration—Articles of Organization filed August 6, 2020, and Secretary of State Statement of Information, filed January 26, 2022 (Tonasut Trust's Document No. 5, and Assentato's and TDE's Document No. 1).

MOTIONS TO DISMISS (ECF Nos. 18, 26)

I. Applicable Law

Defendants bring their Motions pursuant to Federal Rules of Civil Procedure 12(b)(1) (“Rule 12(b)(1)”) and Federal Rules of Civil Procedure 12(b)(6) (“Rule 12(b)(6)”).⁵ The standards for each are discussed below.

⁵ Defendants also raise the particularity requirements of Federal Rule of Civil Procedure 9(b) (“Rule 9(b)”) and the standing requirement of the United States Constitution, and move for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e) (“Rule 12(e)”). See Tonasut Mot. at 1; Assentato Mot. at 1. The Court will address Rule 9(b) in its discussion of whether Brown has properly stated a claim and will address standing as part of the discussion of whether there is subject matter jurisdiction. The Court need not reach the motion for a more definite statement, as the Complaint will be dismissed.

1 **A. Rule 12(b)(1): Lack of Subject Matter Jurisdiction**

2 “Federal courts are courts of limited jurisdiction,” and can only hear cases where there is a
 3 valid basis for federal jurisdiction. *Richardson v. United States*, 943 F.2d 1107, 1112 (9th Cir. 1991).
 4 Federal Rule of Civil Procedure 12(b)(1) (“Rule 12(b)(1)”) authorizes a party to seek dismissal of an
 5 action for lack of subject-matter jurisdiction. *See Fed. R. Civ. P.* 12(b)(1). In the context of a
 6 12(b)(1) motion, the plaintiff bears the burden of establishing subject matter jurisdiction. *Chandler v.*
 7 *State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010).

8 One possible basis for jurisdiction, and the only one relevant to this Order, is federal question
 9 jurisdiction, which grants federal courts jurisdiction over “civil actions arising under the
 10 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331 (“Section 1331”). Whether an
 11 action arises under the laws of the United States is determined by the “well-pleaded-complaint rule,”
 12 which dictates that courts should analyze whether an action arises under federal law by examining
 13 “what necessarily appears in the plaintiff’s statement of his own claim.” *Holmes Grp., Inc. v.*
 14 *Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 830 (2002). If a plaintiff brings a claim under
 15 federal law, that is generally sufficient for jurisdiction, even if the claim is destined to fail. *See Bell*
 16 *v. Hood*, 327 U.S. 678, 682 (1946). “Whether the complaint states a cause of action on which relief
 17 could be granted is a question of law,” which must be decided “after and not before the court has
 18 assumed jurisdiction over the controversy.” *Id.* The only exceptions are where federal claims are
 19 “immaterial and made solely for the purpose of obtaining jurisdiction” or “wholly insubstantial and
 20 frivolous.” *Id.* at 682–83.

21 **i. Standing**

22 Federal subject matter jurisdiction also requires that the plaintiff have standing. A plaintiff
 23 will lack standing unless the plaintiff: “(1) suffered an injury in fact, (2) that is fairly traceable to the
 24 challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial
 25 decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

26 “Because standing and ripeness pertain to federal courts’ subject matter jurisdiction, they are
 27 properly raised in a Rule 12(b)(1) motion to dismiss.” *Chandler*, 598 F.3d at 1122. In the context of
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1 a 12(b)(1) motion, the plaintiff bears the burden of establishing Article III standing to assert the
 2 claims. *Id.*

3 **B. Rule 12(b)(6): Failure to State a Claim**

4 Federal Rule of Civil Procedure 12(b)(6) allows an attack on the pleadings for “failure to
 5 state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “To survive a motion to
 6 dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
 7 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
 8 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff
 9 pleads factual content that allows the court to draw the reasonable inference that the defendant is
 10 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

11 The determination of whether a complaint satisfies the plausibility standard is a “context-
 12 specific task that requires the reviewing court to draw on its judicial experience and common sense.”
 13 *Id.* at 679. Generally, a court must accept the factual allegations in the pleadings as true and view
 14 them in the light most favorable to the plaintiff. *Park v. Thompson*, 851 F.3d 910, 918 (9th Cir.
 15 2017); *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). But a court is “not bound to
 16 accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (quoting
 17 *Twombly*, 550 U.S. at 555).

18 Moreover, Federal Rule of Civil Procedure 9(b) states that an allegation of “fraud or mistake
 19 must state with particularity the circumstances constituting fraud.” Fed. R. Civ. P. 9(b). Specifically,
 20 the “circumstances” required by Rule 9(b) are the “who, what, when, where, and how” of the
 21 fraudulent activity. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003);
 22 *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993) (“[Rule 9(b) requires] the times, dates, places,
 23 benefits received, and other details of the alleged fraudulent activity.”). Additionally, the allegation
 24 “must set forth what is false or misleading about a statement, and why it is false.” *Vess*, 317 F.3d at
 25 1106.

26 As a general rule, leave to amend a dismissed complaint should be freely granted unless it is
 27 clear the complaint could not be saved by any amendment. Fed. R. Civ. P. 15(a); *Manzarek v. St.*
 28 *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

1 **II. Discussion**

2 For the reasons discussed below, the Court finds that there is subject matter jurisdiction and
 3 Brown has standing, but that Brown has failed to state a claim upon which relief can be granted.
 4 Accordingly, the Motions to Dismiss will be GRANTED.

5 **A. The Court has subject matter jurisdiction.**

6 Defendants argue that the action should be dismissed pursuant to Rule 12(b)(1) for lack of
 7 subject matter jurisdiction and lack of standing. These arguments fail.

8 **1. There is federal question jurisdiction.**

9 Brown's Complaint avers that the court has subject matter jurisdiction pursuant to Section
 10 1331 because Brown's claims arise under federal law. *See Compl.* at 1. This is correct.

11 Brown brings a claim for violations of Section 77q(a)(1) and Section 78j(b). *See id.* at 5; *see also* 15 U.S.C. § 77q(a)(1); 15 U.S.C. § 78j(b). These are federal laws. Bringing claims under these
 13 laws is sufficient to endow the Court with subject matter jurisdiction.

14 Defendants argue that there is no subject matter jurisdiction because "there was no 'security'
 15 offered, sold or transferred" which is required for a violation of Section 77q(a)(1) or Section 78j(b).
 16 *See* Tonasut Mot. at 6; Assentato Mot. at 5. This is essentially an argument that Brown has failed to
 17 properly state a claim, and that his claim will fail. But Defendants have not argued that Brown did
 18 not bring a claim under federal law.

19 Because Brown brought a claim under federal law, there is subject matter jurisdiction. *See*
 20 *Bell*, 327 U.S. at 682. It does not matter whether the claim will fail. *See id.* ("Whether the complaint
 21 states a cause of action on which relief could be granted is a question of law," which must be
 22 decided "after and not before the court has assumed jurisdiction over the controversy."). There is no
 23 indication that the federal law claims are "immaterial and made solely for the purpose of obtaining
 24 jurisdiction" or "wholly insubstantial and frivolous," and so the presence of claims brought under
 25 federal law is sufficient for subject matter jurisdiction. *See id.*

26 **2. Brown has standing.**

27 Defendants make a similarly flawed argument as to standing. *See* Tonasut Mot. at 6;
 28 Assentato Mot. at 5. Defendants argue that Brown has no standing because no security was sold to

1 him, and “the purchase money secured loan to Plaintiff and Atlas LLC was their obligation, not their
 2 purchase, and not an investment.” Tonasut Mot. at 6. This is the same argument Defendants made
 3 concerning Brown’s Section 77q(a)(1) and Section 78j(b) claims—because Defendants claim that
 4 they did not actually sell any security, they cannot have violated securities laws, and so Brown has
 5 no standing. This logical chain does not work on a 12(b)(1) motion.

6 Brown alleges that he purchased property in a complex transaction from defendants. *See*
 7 Compl. at 1 (Brown “purchased 32.4 acres of land . . . Plaintiff paid a \$10,000 cash deposit . . .
 8 Plaintiff, *at the time*, believed the purchase was a standard real estate transaction . . .”). And Brown
 9 makes allegations, which, drawing all inferences in his favor, suggest that Brown suffered losses.
 10 *See* Compl. at 2 (“Plaintiff paid the market price of \$299,000 for a 50% ownership interest”), 3
 11 (Plaintiff was forced to borrow further money and sell property when he was unable to make
 12 payments on his loans from Defendants), 4 (“Defendants employed capital in a common enterprise,
 13 relied solely on the Plaintiffs entrepreneurial capital for the generation of profits and
 14 undercapitalized the development to the detriment of the Plaintiff.”). These harms appear traceable
 15 to defendants and redressable by the Court. This is sufficient for standing. *See Spokeo*, 578 U.S. at
 16 338. Whether Brown has actually stated a claim for violations of Section 77q(a)(1) or Section 78j(b)
 17 is a separate inquiry.

18 **B. Brown failed to state a claim upon which relief can be granted.**

19 Brown appears to bring only one cause of action against Defendants: violations of the
 20 Securities Exchange Act of 1934 (15 U.S.C. §§ 77a–78rr). However, Brown’s prayer for relief
 21 provides more detail on what he seeks and the grounds on which he seeks it. First, Brown requests
 22 that the Court declare that “the land transfer” was an “investment contract” and “security” as defined
 23 by Section 77b(a)(1). *See* Compl. at 5. Second, Brown requests that the Court find that Defendants’
 24 omissions in connected with the sale of this “investment contract” violated Section 77q(a)(1) and
 25 Section 78j(b). *See id.* Third, Brown requests that the Court order rescission “of the Defendants [*sic*]
 26 50% and 15% ownership,” citing Section 77l(a)(2).

1 The Court will analyze each of these to determine whether any is a claim upon which relief
 2 may be granted. In doing so, the Court will take Brown's allegations as true and draw all inferences
 3 in Brown's favor. *See Park*, 851 F.3d at 918.

4 i. There is no private right of action for violations of Section 77q(a)(1)

5 At the outset, the Court finds that Brown failed to state a claim for violations of Section
 6 77q(a)(1). The Ninth Circuit has held that there is no private right of action for a violation of this
 7 section. *See In re Washington Pub. Power Supply Sys. Sec. Litig.*, 823 F.2d 1349, 1350–58 (9th Cir.
 8 1987) (examining in detail whether there is a private right of action under “section 17(a) of the
 9 Securities Act of 1933, [currently codified as] 15 U.S.C. § 77q(a),” and holding that “no private right
 10 of action lies under section 17(a)”). Other Circuits have held the same. *See, e.g., Brannan v.*
 11 *Eisenstein*, 804 F.2d 1041, 1043 n.1 (8th Cir. 1986), *Landry v. All Am. Assur. Co.*, 688 F.2d 381,
 12 387–91 (5th Cir. 1982). Section 77q(a) was not intended to create a right for private litigants to sue,
 13 and such a right would be superfluous against the backdrop of other securities laws that create
 14 similar rights. *See Washington Pub. Power Supply*, 823 F.2d at 1355–56.

15 So, regardless of whether Brown's allegations amount to conduct that Section 77q(a)(1)
 16 prohibits, Brown may not bring a cause of action under this section. Brown's claim under Section
 17 77q(a)(1) fails.

18 ii. Brown adequately pleaded the sale of a security.

19 The Court must next determine whether Brown pleaded that Brown or Defendants sold any
 20 security, both for Brown's request for declaratory relief and his Section 78j(b) claim. Brown requests
 21 that the Court find that “the land transfer” was an “investment contract” and “security” (emphasis
 22 added), which necessarily depends on Brown pleading that a security was sold. Brown's claim that
 23 Defendants' violation of Section 78j(b) is also dependent on pleading as such. There is a private
 24 right of action for violations of Rule 10b-5, which the SEC created to enforce Section 78(j)(b). *Janus*
 25 *Cap. Grp., Inc. v. First Derivative Traders*, 564 U.S. 135, 141–42 (2011). The elements of a
 26 violation of Rule 10b-5 are: “(1) a material misrepresentation or omission by the defendant; (2)
 27 scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a
 28 security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss

1 causation.” *Id.* at 141 n.3 (emphasis added). If there was no security sold, the claim will fail at the
 2 third element.

3 A “security,” as used in the Securities Act, includes “commonly known documents traded for
 4 speculation or investment” and “securities of a more variable character,” including “investment
 5 contract[s].” *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 297 (1946). An “investment contract” is “a
 6 contract, transaction or scheme whereby a person invests his money in a common enterprise and is
 7 led to expect profits solely from the efforts of the promoter or a third party.” *Id.* at 298.⁶

8 Here, Brown, Assentato, and TDE all purchased interests in the Agoura Property, intending
 9 to build a solar farm. *Compl.* at 1. The Tonasut Trust later also acquired an interest. *Id.* at 3. Brown,
 10 Assentato, and TDE entered in to an “Operating Agreement” together.⁷ See *Compl.* at 2 (describing
 11 agreement); *see also* First Opp’n at 12–27. Brown alleges that he alone was “*solely responsible* for
 12 the development and resale of the solar facility in the *common enterprise*.” *Compl.* at 2. This
 13 allegation that Brown was solely responsible for generating profits through his efforts does not
 14 appear conclusory, as it is supported by the agreement. See First Opp’n at 38 (Brown’s “initial
 15 contributions” are to be responsible for all substantive work, while Assentato will provide funds and
 16 consult)). It is also supported by other allegations, including that Brown borrowed money in his
 17 individual capacity to fund the solar farm and that Brown alone brought suit against the County
 18 official when the solar farm application was rejected. See *Compl.* at 3.

19 Drawing all inferences in favor of Brown, this transaction constituted an investment contract
 20 and therefore a security. Brown, Assentato, TDE, and the Tonasut Trust all pooled money in a
 21

22
 23 ⁶ There is a separate “family resemblance” test to determine whether a “note” is a security. See *Reves v. Ernst*
 & *Young*, 494 U.S. 56, 63–64 (1990) (describing family resemblance test for notes, and distinguishing it from
 the *W.J. Howey* test “for determining whether an instrument is an ‘investment contract.’”) The transactions in
 question do not appear to qualify as notes, and so the family resemblance test is not applicable.

24
 25 ⁷ Although the agreement itself is not part of the Complaint, the Complaint clearly references its existence.
 See *Compl.* at 2 (“Plaintiff, Emil Assentato, and Tax Deed Enterprises LLC singed an operating agreement . . .”). With the agreement itself now part of the record, and with no challenges as to authenticity, the Court
 finds it appropriate to consider the agreement in ruling on the Motions to Dismiss. See *United States v. Corinthian Colleges*, 655 F.3d at 998 (court may consider document outside the complaint in ruling on
 motion to dismiss if: (1) the document is referenced in the complaint, (2) the document is central to the
 complaint, and (3) there is no question as to authenticity).

1 common enterprise and expected to profit based solely on the efforts of Brown. *See W.J. Howey Co.*,
 2 328 U.S. at 297. Although the Tonasut Trust was not part of the initial ownership group, the Tonasut
 3 Trust later acquired an interest in the property and became a part owner.⁸ *Compl.* at 3. All pooled
 4 their resources and expected to profit based on Brown's efforts. This meets the definition of an
 5 investment contract. *See W.J. Howey Co.*, 328 U.S. at 297.

6 Defendants argue repeatedly that they did not sell any security to Brown, and if any security
 7 was sold, Brown is the one who sold it. *See, e.g.*, Tonasut Mot. at 6; Assentato Mot. at 5, Tonasut
 8 Reply at 2 (“If anything, it is Plaintiff alone who ‘issued’ a security or investment contract to
 9 defendants.”); Assentato Reply at 2. But regardless of whether this is true, it is of no consequence.
 10 Brown’s claims do not depend on a finding that he purchased a security from Defendants. *See Janus*,
 11 564 U.S. at 141 n.3 (defining elements of Rule 10b-5 violation). Brown’s claims for a Section 78j(b)
 12 depend on finding misrepresentations in connection with “the *purchase or sale* of a security.” *Id.*
 13 (emphasis added). If Defendants made misrepresentations in purchasing a security from Brown, and
 14 the other elements are met, the fact that Brown was the seller would not alone defeat Brown’s claim.
 15 Defendants provide no authority suggesting otherwise, and the Court is aware of none. The
 16 purported fact that Brown sold a security to Defendants is also not fatal to Brown’s request that the
 17 Court declare that “the land transfer” was an “investment contract” and “security.” *See Compl.* at 6.
 18 Brown does not specify which land transfer should be found to be a security, or who should be
 19 construed as the buyer. *See id.*

20 Assentato also argues that the loan he made to Brown—of 250,000 to finance the
 21 development of a solar farm on the Agoura Property (*see Compl.* at 3)—was not a security, based on
 22 the “family resemblance” test. *See Assentato Mot.* at 6. The Court’s finding is not that Brown
 23 adequately pleaded that this loan was a security. Rather, the Court’s finding is that, drawing all
 24 inferences in favor of Brown, Brown adequately pleaded that the combination of (1) Brown,
 25
 26

27 ⁸ The Tonasut Trust argued at the hearing that it only loaned money and was not part of any security. The
 28 Complaint alleges otherwise, and states that the Tonasut Trust “acquired a 15% undivided interest in the Plaintiff’s Property.” *Compl.* at 3. Such an interest, when combined with other facts, may constitute an investment contract. *See W.J. Howey Co.*, 328 U.S. at 297.

1 Assentato, TDE, and the Tonasut Trust all acquiring interests in one piece of property; (2) Brown,
 2 Assentato, and TDE signing an operating agreement; (3) and all parties' apparent understanding that
 3 profits would come solely from Brown's efforts, constituted an investment contract and thus a
 4 security.

5 In sum, Brown adequately pleaded that a security was sold. To be clear, this is not a
 6 definitive judicial finding that any transaction constituted a security. It is only a finding that, at this
 7 stage, drawing all inferences in favor of Brown, Brown has pleaded sufficient facts that if proven
 8 true could support a finding that a security was sold.

9 iii. Brown failed to meet the requirements of Rule 9(b), and so his Section 78j(b) claim
 10 fails

11 Brown's claim for a violation of Section 78j(b) requires, among other elements, that Brown
 12 show "a material misrepresentation or omission by the defendant" and "scienter."⁹ *See Janus*, 564
 13 U.S. at 141 n.3. These elements must be pleaded to satisfy the both the pleading requirements of
 14 Rule 9(b) and the pleading requirements of the Private Securities Litigation Reform Act ("PSLRA").
 15 *In re VeriFone Holdings, Inc. Sec. Litig.*, 704 F.3d 694, 701 (9th Cir. 2012). Under Rule 9(b), a
 16 plaintiff pleading fraud must specify "with particularity the time, place, and manner of each act of
 17 fraud, plus the role of each defendant in each scheme." *Lancaster Cnty. Hosp. v. Antelope Valley*
 18 *Hosp. Dist.*, 940 F.2d 397, 405 (9th Cir. 1991) (citing Fed. R. Civ. P. 9(b)). The PSLRA further
 19 requires that the complaint "specify each statement alleged to have been misleading, and the reason
 20 or reasons why the statement is misleading," and must "state with particularity facts giving rise to a
 21 strong inference that the defendant acted with the required state of mind." *In re VeriFone Holdings*,
 22 704 F.3d at 701 (citing 15 U.S.C. § 78u-4(b)(1)(B)).

23 Here, Brown's Complaint fails to meet this standard. Brown's Complaint does not identify
 24 any specific false statement that any Defendant made, as required by Rule 9(b). Nor does it identify
 25 when exactly such a statement occurred, or where. *See Lancaster Cnty. Hosp.*, 940 F.2d at 405

27 ⁹ "Scienter" means "a wrongful state of mind." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341 (2005). It
 28 has also been described as "intention to deceive, manipulate, or defraud." *Tellabs, Inc. v. Makor Issues & Rts.*,
Ltd., 551 U.S. 308, 313 (2007).

(must state “the time, place, and manner of each act of fraud”). Nor does it identify “the role of each defendant in each scheme.” *Id.* Nor does the Complaint identify the reasons why each statement was misleading as required by the PSLRA. *See In re VeriFone Holdings*, 704 F.3d at 701. Finally, the Complaint does not have specific facts “giving rise to a strong inference that the defendant acted with the required state of mind.” *Id.*

In his Oppositions, Brown included a chart which purports to explain why his Complaint satisfied Rule 9(b). *See* 1st Opp’n at 4. The chart in fact demonstrates how Brown falls short. Brown does not identify any specific statement and instead describes a general failure to disclose the details of the transaction. *See id.* In explaining who made false statements, Brown identifies all three Defendants as a group, with no distinction as to which Defendant made any specific statement. *Id.* In identifying when statements were made, Brown points to “October 22, 2020, to February 1, 2022,” a period of nearly a year and half. *Id.* He says all statements were made in Los Angeles County. *Id.*

Brown must be more specific. He must identify a specific statement (or many specific statements), allege specifically where and when the statement was made, allege which defendant made the statement, and describe what exactly was false about the statement. *See In re VeriFone Holdings*, 704 F.3d at 701. Finally, Brown must also allege facts suggesting that Defendants had intent to defraud in making the statements. *See In re VeriFone Holdings*, 704 F.3d at 701.

This shortcoming is a fatal flaw in Brown’s claim for a violation of Section 78j(b). *See id.* The Motions to Dismiss will be GRANTED as to this claim. Brown will be granted leave to amend, as further facts might cure the issues. *See Manzarek*, 519 F.3d at 1031.

21 iii. Brown failed to meet the requirements of the Declaratory Judgment Act, so his
 22 request for a declaration that a security was sold fails.

Brown requested that the Court declare that “the land transfer” was an “investment contract” and “security” as defined by Section 77b(a)(1). *See* Compl. at 6. It is somewhat unclear whether this is intended to be a subsidiary piece of another claim or a standalone claim for a declaratory judgment. In the interest of completeness, the Court will analyze it as the latter.

As discussed above, the Court finds that Brown has stated facts that could support his requested finding. But that alone is not sufficient for a declaratory judgment. Pursuant to the

1 Declaratory Judgment Act, courts may “declare the rights and other legal relations of any interested
 2 party seeking such declaration,” but may only do so in “a case of actual controversy.” *See* 28 U.S.C.
 3 § 2201(a). A plaintiff lacks standing to pursue injunctive relief if the plaintiff “would not stand to
 4 benefit from such relief.” *Slayman v. FedEx Ground Package Sys., Inc.*, 765 F.3d 1033, 1047–48
 5 (9th Cir. 2014).

6 Here, the Court sees no discernable benefit to Brown from a declaration that the land transfer
 7 was a security. *See id.* Such a declaration would not lead to any special rights. Unlike in other cases
 8 where declaratory relief is permitted—for example, where a party seeks to understand whether a
 9 copyright is valid and when a license expires so it can plan its conduct accordingly—the Court sees
 10 no way in which Brown will act differently if the requested declaratory relief is granted. *See Hal*
 11 *Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1553 (9th Cir. 1989). While Brown
 12 would in some sense benefit in this litigation if the Court declared that he met one element of his
 13 claims—that the land transfer was a security—that alone does not appear to be the sort of benefit
 14 that declaratory relief is intended for, and is not sufficient to create a justiciable controversy. *See id.*
 15 at 1553–54 (declaratory relief would not be appropriate if “no substantive rights of the parties would
 16 be affected by a declaration.”). Unlike the parties seeking to understand copyright validity and
 17 ownership in *Hal Roach*, who sought to understand their rights and plan their conduct accordingly,
 18 Brown has not shown that any substantive rights would be affected by a declaration that the transfer
 19 was a security, or that he would act differently based on such a declaratory finding. Because Brown
 20 would not benefit from the requested relief, the action cannot continue on that request alone.

21 The Motions to Dismiss will be GRANTED as to the request for declaratory relief. Brown
 22 will be granted leave to amend. *See Manzarek*, 519 F.3d at 1031.

23 iv. Brown failed to state a claim for rescission under Section 77l(a)(2)

24 Under Section 77l(a)(2),¹⁰ a buyer of a security may sue for rescission. *See Miller v. Thane*
 25 *Int'l, Inc.*, 519 F.3d 879, 885 (9th Cir. 2008). The buyer must show that there was “(1) an offer or

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 28 ¹⁰ Section 77l(a)(2) is often referred to as “Section 12(a)(2)” of the Securities Act. *See, e.g., Miller*, 519 F.3d
 at 885.

1 sale of a security, (2) by the use of a means or instrumentality of interstate commerce, (3) by means
 2 of a prospectus or oral communication, (4) that includes an untrue statement of material fact or omits
 3 to state a material fact” *Id.* Notably, rescission under this section does not require a showing of
 4 reliance or scienter. *See id.* at 886.

5 Section 77l(a)(2) allows the *buyer* of a security to seek rescission. *See id.; see also Gustafson*
 6 *v. Alloyd Co.*, 513 U.S. 561, 578–80 (1995) (“It is understandable that Congress would provide
 7 *buyers* with a right to rescind . . . A *buyer* who discovered a material omission in a prospectus after
 8 the passage of the Act could sue for rescission” (emphasis added)). No authority suggests a party
 9 may seek rescission of any other party’s purchases.

10 Here, Brown seeks to rescind “*Defendants* [sic] 50% and 15% ownership” (emphasis added),
 11 which Brown describes as “real property obtained from violating security laws.” In other words,
 12 Brown wishes to rescind the *Defendants*’ purchases of interests in the Agoura Property. This request
 13 has no basis in Section 77l(a)(2). Brown can neither use Section 77l(a)(2) to rescind the purchases
 14 the *Defendants* made from him nor the purchases *Defendants* made from others.

15 The Motions to Dismiss are GRANTED as to the request for rescission pursuant to Section
 16 77l(a)(2). Brown will be granted leave to amend, as amending this request might lead to a valid
 17 claim for rescission. *See Manzarek*, 519 F.3d at 1031.

18 v. Conclusion as to Motions to Dismiss

19 For these reasons, Brown has not stated a claim which entitles him to any of the relief he
 20 requests. The Motions to Dismiss will be GRANTED. However, Brown will be GRANTED LEAVE
 21 TO AMEND. *See Manzarek*, 519 F.3d at 1031.

22 **CONCLUSION**

23 For the reasons stated herein, the Court ORDERS as follows:

24 1. Tonasut Trust’s Request for Judicial Notice (ECF No. 18-2) is GRANTED IN PART. The
 25 Request is GRANTED as to: Tonasut Trust’s Document No. 4, Tonasut Trust’s Document
 26 No. 7, and Tonasut Trust’s Document No. 8. The Request is DENIED as to: Tonasut Trust’s
 27 Document No. 1, Tonasut Trust’s Document No. 2, Tonasut Trust’s Document No. 3,

1 Tonasut Trust's Document No. 5, Tonasut Trust's Document No. 6, and Tonasut Trust's
2 Document No. 9.

3 2. Assentato's and TDE's Request for Judicial Notice (ECF No. 26-2) is GRANTED IN PART.
4 The Request is GRANTED as to: Assentato's and TDE's Document No. 2 and Assentato's
5 and TDE's Document No. 3. The Request is DENIED as to Assentato's and TDE's
6 Document No. 1 and Assentato's and TDE's Document No. 4.
7 3. Tonasut Trust's Motion (ECF No. 18) to Dismiss is GRANTED as to all Brown's claims and
8 all relief Brown requested, on the basis that Brown failed to state a claim upon which relief
9 can be granted. Brown is GRANTED LEAVE TO AMEND.
10 4. Assentato's and TDE's Motion to Dismiss (ECF No. 26) is GRANTED as to all Brown's
11 claims and all relief Brown requested, on the basis that Brown failed to state a claim upon
12 which relief can be granted. Brown is GRANTED LEAVE TO AMEND.
13 5. Brown is ORDERED to file a First Amended Complaint within twenty-eight (28) days of the
14 date of this Order if he still desires to pursue any of the claims being dismissed with leave to
15 amend.

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17
18 IT IS SO ORDERED.



19
20 Dated: December 6, 2023

21 MAAME EWUSI-MENSAH FRIMPONG

22 United States District Judge

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